

CR-15-00924-PHX-GMS (DKD), August 4, 2015

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

United States of America, )  
 )  
Plaintiff, ) CR-15-00924-PHX-GMS (DKD)  
 ) August 4, 2015  
vs. ) Phoenix, Arizona  
 )  
Erik Stephen Foster, ) 1:34 p.m.  
 )  
Defendant. )  
\_\_\_\_\_ )

BEFORE: THE HONORABLE EILEEN S. WILLETT, MAGISTRATE JUDGE

TRANSCRIPT OF PROCEEDINGSDETENTION HEARING (Continued)

## A P P E A R A N C E S

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Proceedings Recorded by Electronic Sound Recording  
Transcript Produced by Transcriptionist

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P R O C E E D I N G S

(Court was called to order by the courtroom deputy.)

(Proceedings begin at 1:34.)

COURTROOM DEPUTY: Criminal docket 15-924, *United States of America v. Erik Foster*, on for a continued detention hearing.

MS. JENNIS: Good afternoon, Your Honor. Lisa Jennis for the United States.

THE COURT: Good afternoon.

MR. TATE: Good afternoon, Your Honor. Loyd Tate on behalf of Mr. Erik Foster who is in custody, seated to my right.

THE COURT: Good afternoon.

This matter was continued from Friday I believe. The Court had some questions of counsel and counsel did need the opportunity to review some documentation that was provided.

So, therefore, the Court begins with its questions that it had on Friday and then you can both present what you would like to present today with regard to what you've since seen.

But my first question was, is this a presumption case and what is the minimum mandatory sentence on Count 1 and any maximum sentence?

MS. JENNIS: So the minimum mandatory would be ten years, Your Honor, because it's five kilos or more of cocaine.

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1 THE COURT: And is there a maximum?

2 MS. JENNIS: Life, Your Honor.

3 THE COURT: Therefore, this is a presumption case?

4 MS. JENNIS: Yes, it is.

5 THE COURT: All right. The next question the Court  
6 had was, I needed more specifics with regard to the alleged  
7 role of this individual and what was actually observed by law  
8 enforcement with regard to that exact role as alleged in the  
9 indictment.

10 MS. JENNIS: Yes, Your Honor. And I think we had  
11 discussed that the complaint is accurate up to the end of the  
12 complaint. So what was observed is all the communication with  
13 the undercover agent was between co-defendant Paris Frazier and  
14 the undercover. It was not -- did not involve Mr. Foster.

15 On the date of this case, I think it was on July 22,  
16 law enforcement did observe the defendant and his two  
17 co-defendants driving in the defendant's car so I'll just refer  
18 to the defendant would be Mr. Foster if that's okay?

19 So they were in Mr. Foster's Camry, the three of  
20 them, and they met in the undercover parking lot. Only  
21 Mr. Frazier exited the car to meet the undercover agent.

22 THE COURT: Who was the driver?

23 MS. JENNIS: The driver at the time was Mr.

24 And after that meeting, Mr. Foster -- and, again, the  
25 co-defendants, again, Mr. Foster is driving, proceed eventually

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1 to the warehouse where the car that contains the cocaine is  
2 parked. They do some countersurveillance. Again, Mr. Foster  
3 is driving so they kind of drive around the location for about  
4 15 minutes.

5 Then they get to the warehouse which is surrounded by  
6 a gate, a fence, and a locked gate. Mr. Frazier gets out of  
7 the front seat -- front passenger side of the car and he cuts  
8 the lock. Then as he returns to the car, Mr. Deatherage gets  
9 out of the back seat of the car and Mr. Deatherage goes through  
10 the gate. Mr. Frazier is behind him. Mr. Foster remains in  
11 the car.

12 It's a little bit of a walk, you know, to get to the  
13 car that contains the narcotics. When they get close to the  
14 car, Mr. Deatherage stops and appears to conduct some sort of  
15 security. We cannot see any firearms. They are never observed  
16 on the video. There's no firearms observed because -- there is  
17 air surveillance going on at this time.

18 When Mr. Frazier gets to the car, he opens the trunk  
19 and then he opens the rear back seat, back door of -- it's a  
20 four-door car and closes the door. Then he goes back to the  
21 trunk and he takes out six kilos of cocaine. Him and  
22 Mr. Deatherage then return to the car. As they are returning,  
23 you do see -- I can't see inside the car but I know that --

24 THE COURT: Which car? You've got two cars.

25 MS. JENNIS: I'm sorry. I can't see inside the

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1 Camry, which is owned by Mr. Foster. You can't see inside of  
2 it but you can see the car door's open on the passenger side,  
3 both the front and the back. And Mr. Deatherage and  
4 Mr. Frazier then get into the Camry which is still driven by  
5 Mr. Foster.

6 And just in case Your Honor is reading -- I'm sure  
7 you've read the complaint. That is where the mistake was. We  
8 originally thought it was Mr. Foster who got out of the car  
9 with Mr. Frazier and Mr. Deatherage was driving. Upon review  
10 of the surveillance tapes, that is clear that that is not what  
11 happened. What happened is what I told you and that Mr. Foster  
12 remains in the car at all times and is the driver of the Camry.

13 THE COURT: Okay.

14 MS. JENNIS: So the two of them, Mr. Frazier and  
15 Mr. Deatherage, get in the car. The car kind of takes off and  
16 within seconds, is lit up by law enforcement trying to get them  
17 to stop. It doesn't stop. It continues to go at a high rate  
18 of speed through traffic. It's approximately 7 o'clock. It's  
19 between 6:30 and seven. I'm sorry, Your Honor, I do the  
20 agents.

21 THE COURT: a.m. or p.m.?

22 MS. JENNIS: p.m. on a Wednesday and he --

23 THE COURT: Where?

24 MS. JENNIS: In Phoenix approximately --

25 Excuse me one second.

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1 (Ms. Jennis confers with the case agent.)

2 MS. JENNIS: Indian School and 43rd Avenue, Your  
3 Honor. I did watch the video. I watched the surveillance tape  
4 but I can't tell exactly what the streets are.

5 THE COURT: Between six and 7 p.m. at night?

6 MS. JENNIS: Yes.

7 THE COURT: In traffic?

8 MS. JENNIS: Yes, there's traffic.

9 THE COURT: All right.

10 MS. JENNIS: There's traffic but it wasn't stopped  
11 traffic. It was just normal traffic for that time.

12 THE COURT: And the speed of the car?

13 MS. JENNIS: I cannot tell but I can tell you it is  
14 going a lot faster than any of the other cars, okay? You can  
15 definitely see it passing every other vehicle. It does that  
16 for a while and then when it gets to Grand Avenue, it does go  
17 for just a couple of seconds the wrong way. It kind of crosses  
18 across Grand Avenue going the wrong way to pull into some sort  
19 of -- I don't know. It's like a dirt parking lot, Your Honor,  
20 where they kind of hang out for a little bit and then  
21 eventually it gets back on the road and takes off to Paris  
22 Frazier's girlfriend's house which is on Anderson Road in  
23 Phoenix and I believe that is somewhere near 7th Street and  
24 Bell, that general area.

25 THE COURT: Does law enforcement stop the chase?

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1 MS. JENNIS: No, it does not because -- and this is  
2 in the complaint -- for safety of law enforcement and of the  
3 public. They stop the chase early on. So that's before they  
4 go the wrong way up Grand Avenue.

5 THE COURT: So the answer to my question was, they  
6 stopped the chase?

7 MS. JENNIS: They stopped the chase, yes. But they  
8 did have air surveillance.

9 Then --

10 THE COURT: And so this is by air surveillance tape  
11 that you're relaying this?

12 MS. JENNIS: Yes. I mean, I have -- the agent  
13 reviewed it. I've also reviewed it and I did just provide it  
14 to Mr. Tate.

15 THE COURT: Okay.

16 MS. JENNIS: When they get to Mr. Frazier's  
17 girlfriend's house, they park across the street. Mr. Frazier  
18 gets out of the vehicle and then he moves a truck from the  
19 driveway of his girlfriend's house and then the Camry pulls in  
20 where the truck was. So then you really can't see anything  
21 after that, Your Honor. There's nothing -- you can't see  
22 what's going on. Law enforcement does approach the house later  
23 on that evening. They call everyone inside the house out and  
24 this is in the complaint. Four people exit the house, the  
25 three defendants and the girlfriend. There is nothing.

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1           The Camry owned by Mr. Foster is searched. There's  
2 nothing found in the Camry. The cocaine is -- was thrown out  
3 of the car. It was in a duffel bag, thrown out of the car  
4 early on in the chase and it is located. Mr. Frazier provides  
5 some details about that. Located in the house, as we discussed  
6 earlier, were many, many weapons, many firearms, long arms and  
7 pistols, most of which belonged to Mr. Frazier. Mr. Frazier  
8 did identify two firearms as belonging to Mr. Foster and two  
9 belonging to Mr. Deatherage, one being a pistol and one being  
10 an assault rifle.

11           THE COURT: Mr. Foster's weapons that were found in  
12 the home?

13           MS. JENNIS: A pistol and an assault rifle and also  
14 the same with Mr. Deatherage.

15           THE COURT: And this is from the co-defendant or is  
16 this from licensure on the weapons?

17           MS. JENNIS: This is from the co-defendant's  
18 statement. Those firearms -- I don't believe we've done a  
19 trace on them or completed that yet. But they don't come back  
20 to -- they are not weapons that are required to be registered,  
21 Your Honor.

22           THE COURT: Okay.

23           MS. JENNIS: But we will conduct a trace and possibly  
24 find out who purchased those firearms and when, but we don't  
25 have that information.

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1 THE COURT: Okay. But the reason you're saying it is  
2 because it was communicated by the co-defendant?

3 MS. JENNIS: Yes. Mr. Frazier is why we know this.  
4 Mr. Frazier also told us that those firearms that were owned by  
5 Deatherage and by Foster were inside the vehicle during the  
6 time I've described, from the parking lot to where the drugs  
7 were to the journey to the girlfriend's house. But they were  
8 not there when law enforcement got there and searched the  
9 vehicle.

10 Now, we don't know much about Mr. Foster. Does that  
11 answer your question about the offense? I think you had  
12 additional questions, a little bit about the Facebook and a  
13 about his affiliation with groups?

14 THE COURT: My last question, the question that you  
15 just answered, was what was the alleged role of Mr. Foster in  
16 the incident stated in the indictment and then was -- what was  
17 observed by law enforcement, if any of it, and then you  
18 answered that. The next question I had was, is the Government  
19 aware of any known ties that Mr. Foster may have to the Arizona  
20 Special Operations militia group that was referenced during the  
21 other co-defendant's hearings or any other militia group?

22 And then the last piece of information I had was that  
23 I had reviewed the exhibits from Mr. Deatherage's detention  
24 hearing which reflected Mr. Foster's name on the social network  
25 and it looked like Facebook is what those exhibits were.

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1 MS. JENNIS: You are correct.

2 THE COURT: And Mr. Foster's name was posted as a  
3 like to two different statements that were reflected in the  
4 exhibits from Mr. Deatherage's detention hearing.

5 But my first question before that was any known ties  
6 to the Arizona Special Operations group that was referenced  
7 during the co-defendant's hearings?

8 MS. JENNIS: All the United States knows is that you  
9 are correct, that he does like two statements on the Special  
10 Operations or Arizona Special Operations group's Facebook. The  
11 agent and I did go back and look. I didn't see any comments.  
12 Sometimes you can't see those on printouts. I did not see any  
13 comments made by Mr. Foster. I just saw where he had liked.

14 I don't know --

15 THE COURT: Was this the Facebook page for Arizona  
16 Special Operations or was this the Facebook page for Mr. --

17 MS. JENNIS: Yes.

18 THE COURT: It was co-defendant Deatherage went by a  
19 name of Winchester on those pages that were attached to the  
20 exhibit sheets and it indicated Facebook, so it was Facebook  
21 for the Arizona Special Operations?

22 MS. JENNIS: Yes. So this would have been Exhibit 1  
23 that the United States presented at Robert Deatherage's  
24 detention hearing. It is the Facebook -- it is public Facebook  
25 so it was just printed out for Arizona Special Operations

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1 group.

2 THE COURT: Okay.

3 MS. JENNIS: It is believed that Mr. Deatherage, who  
4 goes by the name Anthony Winchester, is the leader of that  
5 group and the agent and I, after you had your hearing last  
6 Friday, went on the Facebook page to see if there were any  
7 comments made and we did not see any comments because sometimes  
8 you can't see those when you print them out. There's  
9 additional ways to look but we didn't see it.

10 So I don't know about his affiliation with militia  
11 groups. All the United States knows is that on May 29 -- I  
12 previously represented it was May 23 but on May 29 Mr. Foster,  
13 Mr. Deatherage and Mr. Frazier were all present at an Islamic  
14 protest in Phoenix, Arizona.

15 At that protest, there were photographs taken by law  
16 enforcement. And I found out yesterday that these fast -- and  
17 I communicated that to Mr. Tate last night and that his -- I  
18 think I always represented that Mr. Foster was at that  
19 gathering but he was actually armed with an assault rifle which  
20 appears to be the same automatic rifle that was located at  
21 Mr. Frazier's girlfriend's house on July 22, 2015.

22 At all times, as is the same with the other people,  
23 you know, they are allowed to have the assault rifles and they  
24 are pointing down. They are not pointed at people. It's a  
25 standard kind of photograph, but he is there with some tactical

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1 gear on and an assault rifle and that is --

2 THE COURT: With a what -- oh, tactical gear on.

3 MS. JENNIS: Tactical gear and an assault rifle on,  
4 Your Honor. That is just additional information that I have.

5 I got relayed to me that somehow you had a question  
6 about aliases. I don't have any known aliases for Mr. Foster.

7 THE COURT: I don't --

8 MS. JENNIS: I don't know. Mr. Kirby, when he  
9 covered, had mentioned that but maybe he was -- you know, since  
10 he was just covering me, was perhaps he was talking because  
11 Mr. Deatherage using the alias as Mr. Winchester.

12 THE COURT: I did not have listed in my questions  
13 that I had that an alias question with regard to Mr. Foster.

14 I may have mentioned the picture of Mr. Deatherage  
15 that had the word "sniper" on it but I don't know if I did or  
16 not. It might have been in Mr. Deatherage's hearing.

17 MS. JENNIS: Well, Your Honor, all I have is that he  
18 doesn't have any known aliases that we know about.

19 THE COURT: Okay.

20 MS. JENNIS: I don't recall if there were additional  
21 questions, Your Honor.

22 THE COURT: I did not have any additional questions  
23 at the Friday hearing. I am going to ask you one question from  
24 information you just told me, though. You said there was an  
25 Islamic protest. Who was protesting what?

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1 MS. JENNIS: I'm just looking at my noting notes,  
2 Your Honor, if you bear with me.

3 THE COURT: What do you mean by an Islamic protest?

4 MS. JENNIS: If I may?

5 THE COURT: Yes.

6 MS. JENNIS: I was consulting with the case agent,  
7 Adam Nixon, special agent with the FBI. If Your Honor recalls,  
8 recently there was a shooting in Texas at a mosque involving  
9 the cartoons and the people who attended this protest what mad  
10 at Islam and they were mad at them for going, the people who  
11 went to them in Texas and were shooting at the people in Texas.

12 THE COURT: So at an Islamic mosque here in Phoenix  
13 there was a protest by people against --

14 MS. JENNIS: Against Islam, Your Honor.

15 THE COURT: Against Islam. Okay. It was at a mosque  
16 here in Phoenix did you say.

17 MS. JENNIS: Yes. I was going to give Your Honor the  
18 address. That's what I was looking up. It's the Islamic  
19 Community Center in Phoenix at 7516 North Black Canyon Highway,  
20 Phoenix, Arizona 85051. It is not the first protest this year.  
21 I believe it's the second one that occurred on May 29 of 2015.

22 THE COURT: Okay.

23 Was there anything further from the Government at  
24 this point in time?

25 MS. JENNIS: No, Your Honor.

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1 THE COURT: Okay. And then, Mr. Tate, I know this is  
2 a presumption case. Go right ahead.

3 MR. TATE: Judge, would you prefer I speak at the  
4 podium?

5 THE COURT: Whichever is easier for you. If you have  
6 all of your notes there, you can certainly stay at the seat or  
7 if you need to consult with your client, you can stay there.  
8 Whatever is more convenient to you just as long as I can hear  
9 you.

10 MR. TATE: Yes, ma'am.

11 Judge, I think I would prefer if I can work  
12 backwards.

13 THE COURT: Certainly.

14 MR. TATE: Meaning the Islamic protest and, again,  
15 the problem here, Judge, is that there's a whole lot of back  
16 story that we don't know. One, I am familiar with the incident  
17 that happened in Texas and then the gentleman that then had a  
18 cartoon -- Islamic cartoon here and the protest happened at  
19 this Islamic mosque. And here I don't want to relate as in any  
20 factual basis because I'm just going from what I watched on the  
21 news, but I am familiar with the situation in Texas and then  
22 following the story here that they had a cartoon Mohammed, a  
23 cartoon of Mohammed type of contest here and that protest  
24 happening at this particular mosque.

25 The problem with -- and we would ask that the Court

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1 not give a lot of weight to that situation because, one, we  
2 don't know, and the Government has not provided any  
3 information, that Mr. Foster had any connection to the  
4 gentleman that organized this protest or that he was doing  
5 anything other than exercising his constitutional right to  
6 peacefully protest at this particular mosque.

7 There's just too many unknowns about it. Judge, the  
8 Government has not produced any type of evidence that  
9 Mr. Foster has any type of role in or special connection to the  
10 Arizona Special Operations group. If we proceed backwards and  
11 talk about Mr. Frazier and him claiming that certain weapons  
12 were Mr. Deatherage or certain weapons were Mr. Foster, Judge,  
13 I have been able to cover a lot of the Facebook posts and posts  
14 from Mr. Frazier and I would just offer to the Court that  
15 almost anything Mr. Frazier says is with suspect because of his  
16 posts and mainly just to say of his disgusting nature of his  
17 posts.

18 Judge, there has been no connection with my client at  
19 this point, at this early point, with him providing any  
20 weapons. Of course I'm not going to comment on his -- on any  
21 type of specific role in him either allegedly driving a car or  
22 not and I am -- that part I am just going to leave to the  
23 Court's discretion.

24 Judge, I would ask the Court to consider, though,  
25 that Mr. Foster, as was claimed originally in the affidavit,

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1 the Government now has agreed that Mr. Foster was not involved  
2 in specifically going and getting drugs or the five or six  
3 kilos in making contact, getting these drugs at this particular  
4 warehouse.

5 I would ask the Court to consider also that while I  
6 cannot avow as to how all of this began, I think it is  
7 undisputed that the Government made contact with Mr. Frazier  
8 and their contact with Mr. Frazier led to a long trail of  
9 contact and following up on Mr. Frazier and all of that.

10 There was not any initial contact or surveillance of  
11 Mr. Foster. There was no initial contact so far as wait a  
12 minute, we need to check out who this Foster guy is from the  
13 beginning. Mr. Frazier had made all of these statements and  
14 viewed his posts. And, again, I'll let the Government contact  
15 as to how the initial, but there was a whole lot of background  
16 that happened with Mr. Frazier, not with my client as in coming  
17 up on any radar anything.

18 Now, let's talk about those particular names and I am  
19 learning much more about Facebook posts than I had ever known  
20 before. My understanding is that a meme is when you take a  
21 picture -- a picture is taken of someone, usually let's say a  
22 celebrity because in this particular Facebook post there was  
23 also a picture of President Reagan holding a -- it looks like a  
24 wine glass. Looks like he's at a state dinner. And then they  
25 put over it or under it some quote like, and I beg the Court's

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1 indulgence just -- something like, you know, let's kill all of  
2 the mother fuckers.

3 Now, we know that President Reagan never had any  
4 affiliation or comment or anything like this. But they take  
5 the picture, put the comment under it as if it's attributed to  
6 President Reagan. Here, Judge, the analogy is when it says,  
7 "We're all fucking nuts but we're family and that means I'd  
8 hide a body for you," I would caution the Court that the  
9 picture of the people that are in the meme are not folks from  
10 the Arizona Special Operations.

11 Now, I'm not vouching for that group. I'm saying  
12 that that's a meme that they take a picture from, put this  
13 saying on, and Mr. Foster can like it, think it's funny.  
14 There's been a number of memes made about Bill Cosby that  
15 people show part of his Jello commercial, put a picture of  
16 Sleeping Beauty there and people like it in the sense that they  
17 may find it funny or not.

18 But what I do want to differentiate is to say it is a  
19 meme. It is not a quote from him or a specific person that he  
20 is now endorsing. Secondly, I believe, and I am willing to  
21 defer to the Government, that the second quote, "How far are  
22 you willing to go to protect yourself and your family's  
23 liberties and personal freedom, we are not gonna lose our  
24 country without a serious fight."

25 I am not sure whether that is a quote from

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1 Mr. Deatherage or Mr. Frazier but, again, we don't know -- it  
2 shows Mr. Foster posted a like to the comment. It does not  
3 show that he made any comment with or posted any comments of  
4 this nature.

5 Judge, it is a presumption case but we would ask,  
6 Judge, that the presumption can be overcome in the sense that  
7 there is under the statute a least onerous means of making sure  
8 that Mr. Foster appears in Court. He has a place of residence.

9 Now, that place of residence may change because it is  
10 under -- subject to foreclosure and we're not sure if that's  
11 going to happen or not. Of course he would have to report that  
12 to Pretrial Services and give any other residence that he would  
13 stay at.

14 But, Judge, he has some serious health needs. He has  
15 been on disability. Since he has been at CCA, he tells me that  
16 he has not received any medication for PTSD or anxiety. My  
17 understanding was that the VA doctor had recommended and that  
18 there was actually a service dog that helps him or aids him.  
19 And for me to try to tell the Court how that works, I'm not  
20 really sure. Somehow it aids him and calms him and he was  
21 actually provided this service dog.

22 Judge --

23 THE COURT: For the PTSD or anxiety?

24 MR. TATE: Yes, ma'am. And so what we are asking is  
25 that if he is on release, he can be strictly monitored. He can

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1 be ordered not to have use of a computer at all, much less have  
2 any contact with any Arizona Special Operations sites. He has  
3 no reason to be in contact with any member of the Arizona  
4 Special Operations group. He has no criminal record is my  
5 understanding and, Judge, there is a least onerous means to  
6 make sure that he is monitored, receives his medication and  
7 also is not a danger to the community.

8 THE COURT: Do you know what medication is he on?

9 MR. TATE: My understanding is that he had not been  
10 prescribed medication because they wanted to drop -- they, the  
11 VA Hospital wanted to try the service dog first because at the  
12 time he was a -- had a CDL license and was driving for Swift  
13 Trucking and he could not be on those medications and drive.

14 THE COURT: Okay. So there's no medication currently  
15 that is prescribed that he is not receiving at the facility  
16 that he is in now?

17 MR. TATE: Yes, Your Honor. There is no prescribed  
18 medication. They were trying the dog and things of that nature  
19 first and of course at CCA he can't have the service dog or  
20 anything of that nature.

21 THE COURT: Right. Okay. Thank you, Mr. Tate.

22 MR. TATE: Yes, ma'am.

23 THE COURT: And did the Government have anything in  
24 rebuttal on the defense's proffer?

25 MS. JENNIS: Your Honor, what Mr. Tate says is

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1 correct. You know, I don't believe that Mr. Foster posted  
2 anything on this Facebook account but just something that I  
3 didn't point out before. In all fairness, I guess I thought  
4 this was Mr. Frazier but the picture where Mr. Foster likes the  
5 other one where it says on Exhibit 1 that I used in  
6 Mr. Deatherage's case, it says, "Chance of a murder or  
7 terrorist attacking this gathering," it's page five of that  
8 exhibit. Do you have that, Your Honor?

9 THE COURT: I've got the exhibits with me. Hang on.

10 Yes. I have that page.

11 MS. JENNIS: That is a picture of Mr. Foster. I  
12 think initially I thought that was Mr. Frazier. Now, seeing  
13 the pictures that were provided to me today by --

14 THE COURT: Are you talking about the gentleman to  
15 the left?

16 MS. JENNIS: Yes, with the black hat on and the  
17 firearm.

18 THE COURT: Yes.

19 MS. JENNIS: That is Mr. Foster.

20 THE COURT: With Mr. Deatherage?

21 MS. JENNIS: Yes. And I have no information that  
22 they knew each other before or that Mr. Foster was involved in  
23 this group before or anything.

24 So when Mr. Tate says that we were looking at  
25 Mr. Frazier and Mr. Foster came on our radar on July 22, he is

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1 correct. Were we taking pictures of Mr. Foster? Were we  
2 looking for him when we were at the protest? No. It's just  
3 something that law enforcement attends these protests to make  
4 sure that they are peaceful and takes photographs. They were  
5 not targeting Mr. Foster.

6 THE COURT: And this is a picture, what is it, the  
7 meme -- what do they call it?

8 MR. TATE: It's calls a meme.

9 THE COURT: The meme that has the picture that says,  
10 "Chance of a murderer or terrorist attacking this gathering,  
11 that is a picture that was taken at the Islamic protest?" Is  
12 that what you are saying?

13 MS. JENNIS: Yes. On May 29 of 2015, Your Honor.

14 MR. TATE: Judge, I'm not saying that that is a meme.  
15 I am saying --

16 THE COURT: The meme is something that comes from  
17 another source.

18 MR. TATE: Right.

19 THE COURT: Yeah. Got it. Thank you.

20 MS. JENNIS: This is different than the picture of  
21 Ronald Reagan with a glass of wine.

22 THE COURT: Right. And a picture of the charters  
23 from whatever --

24 MS. JENNIS: Exactly.

25 THE COURT: -- movie that was.

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1 MS. JENNIS: And we have no indications that  
2 Mr. Foster posted that.

3 THE COURT: What did you say?

4 MS. JENNIS: We have no indication that Mr. Foster  
5 posted this post, just that he liked it. Again, I saw no  
6 evidence of any commentary by Mr. Foster other than that  
7 clarification because I don't -- you know, I don't know I  
8 really understood that that was him. The last time we were  
9 here but now just looking at photographs, it just comes to  
10 light that that really is him in that picture. It's  
11 Mr. Foster.

12 So that was taken on May 29, 2015, at the protest at  
13 the Islamic mosque.

14 But other than that, Your Honor, you know, I listened  
15 to what Mr. Tate has to say and the United States has not  
16 changed its position and a lot of it has to do with  
17 Mr. Foster's mental health and I had talked to probation  
18 about -- I mean Pretrial Services about this early on because I  
19 wanted to know what they thought about getting him the proper  
20 treatment for his post-traumatic stress. And when I spoke to  
21 Cici Foster -- no, relation to Erik Foster -- she told me that  
22 she has seen improvement in other people who are on pretrial  
23 release go through programs if not with the VA, then they have  
24 other programs that really help them with their posttraumatic  
25 stress disorder. I don't know about the service dogs but I

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1 certainly have heard about service dogs assisting people with  
2 mental health conditions.

3 So the United States today just wants Your Honor to  
4 have the complete picture, but we still do believe that the  
5 conditions set by Pretrial Services are such that would ensure  
6 that Mr. Foster was neither a danger to himself or to the  
7 community.

8 THE COURT: All right.

9 Well, thank you, everyone, for coming back to answer  
10 the questions that I had in addition to the information that  
11 you've provided me with.

12 Mr. Foster, this is now taken under advisement by me  
13 and I'll be issuing a ruling very shortly, hopefully by the end  
14 of the day, and it will be posted probably or dropped as an  
15 order probably tomorrow. Okay. Thank you very much.

16 MS. JENNIS: Thank you, Your Honor.

17 MR. TATE: Thank you, Your Honor.

18 (Proceedings concluded at 2:11 p.m.)  
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C E R T I F I C A T E

I, ELAINE M. CROPPER, court-approved transcriber,  
certify that the foregoing is a correct transcript, to the  
best of my skill and ability, from the official electronic  
sound recording of the proceedings in the above-entitled  
matter.

DATED at Phoenix, Arizona, this 23rd day of January,  
2017.

s/Elaine M. Cropper

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Elaine M. Cropper

United States District Court